IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19108 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEESA TALUKA ANUZHUCHIT JATI SAMUDAIK KHETI SAHAKARI MANDLI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR DHAVAL M BAROT for Petitioner(s) : 1,
MR. M.R. MENGDEY, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate

writ, direction or order directing the respondent No.2-Collector, Banaskantha to allot 50 Acres of land from Survey No.237 of village Kant, Taluka Deesa, District Banaskantha to the petitioner-society and in the alternative, it is prayed to quash and set aside the decisions of the respondent No.2-Collector, Banaskantha dated 30.4.2004 and 5.7.2004 by which some portion of the land bearing Survey No.237 paiki has been alloted to one Sarvodaya Education Trust for playground and school building as well as transferring 45 Acres of land to the State Government, more particularly, Deputy Collector, Land Acquisition & Rehabilitation, Seepu Irrigation Project for allotment of the land to the affected persons who are affected due to acquisition of their lands for Seepu Irrigation Project.

2. It is the contention of the petitioner that petitioner is a co-operative society and had applied for allotment of 50 Acres of land from the land bearing R. S. No. 237 situated at village Kant which is a Gauchar land. It is the case of the petitioner that the Revenue Authority replied to the petitioner that as the said land still remains as Gauchar land and therefore, no allotment can be made from the said Gauchar land and finally the

State Government rejected the representation of the petitioner to grant land from the land bearing Survey No.237 paiki vide communication dated 2.8.1997. It appears from the record that the petitioner-society challenged the said decision before this Court by way of Special Civil Application No.7383 of 1997 and the learned Single Judge of this Court (Coram: Hon'ble Mr. Justice M.R.Calla J., as he then was) dismissed the said Special Civil Application. It appears that being aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge of this Court dated 13.10.1997 passed in Special Civil Application No.7383 of 1997, the petitioner has preferred Letters Patent Appeal No.58/1998 along with Civil Application No.325 of 1998 and the said Letters Patent Appeal has been admitted and pending for final hearing before the Division Bench of this Court. In the meantime, the Collector, Banaskantha passed an order dated 30.4.2004 allotting 4047 sq. mts. of land for the construction of primary school and 16188 sq. mts. of land for playground out of the land bearing S. No. 237 paiki to the Sarvodaya Education Trust, Deesa. The Collector, Banaskantha also passed an order dated 5.7.2004 transferring 45 Acres of land to the State Government

and/or Dy. Collector, Land Acquisition & Rehabilitation, Seepu Irrigation Project, Palanpur for allotment of the land to the persons who are evicted on account of acquisition of their lands for Irrigation Project and therefore, the petitioner has preferred present Special Civil Application with the aforesaid reliefs.

3.When the matter was heard by this Court, this Court asked the learned advocate appearing on behalf of the petitioner that Whether the pleadings are completed or not ? and further that Whether he will be proceedings further with the matter on the basis of the pleadings or not ? Shri Barot, learned advocate appearing on behalf of the petitioner has replied and submitted that he is ready to argue the matter on merits on the basis of pleadings as it is and thereafter, the matter came to be heard by this Court and heard Mr. Barot, learned advocate appearing on behalf of the petitioner. On the basis of the pleadings in the present Special Civil Application, this Court has told Mr. Barot, learned advocate appearing on behalf of the petitioner that as the petitioner is challenging the orders passed by the Collector, Banaskantha dated 30.4.2004 as well as dated

5.7.2004 but the petitioner has not joined the affected parties who are beneficiaries of the aforesaid orders dated 30.4.2004 and 5.7.2004 and therefore, this Court has drawn attention of the learned advocate appearing on behalf of the petitioner that since affected parties on account of orders under challenge are not joined as party-respondents, no relief can be granted in favour of the petitioner in this petition challenging the aforesaid orders dated 30.4.2004 and 5.7.2004. Now at this stage, Shri Borot, learned advocate appearing on behalf of the petitioner has requested to grant him sometime to amend Special Civil Application by joining those affected parties as party-respondents. Such request, at this stage cannot be granted and the same is rejected. In view of the fact that as the affected parties who are beneficiaries of the orders dated 30.4.2004 and 5.7.2004 are not joined as party-respondents, no relief can be granted in favour of the petitioner on the ground of non-joinder of proper and affected parties. So far as the prayer of the petitioner directing the respondent No.2 to allot 50 Acres of land from the land bearing Survey No.237 of village Kant, Taluka Deesa, District Banaskantha is concerned, as earlier the petitioner's application came

to be rejected by the Collector, Banaskantha as well as the State Government vide communication dated 2.8.97 and the same came to be confirmed by the learned Single Judge of this Court by its judgment and order dated 13.10.1997 passed in Special Civil application No.7383/1997 against which the Letters Patent Appeal No.58/98 is pending before the Division Bench of this Court, the present Special Civil Application for the said relief cannot be entertained. However, it will be open for the petitioner to pursue the Letter Patent Appeal No.58/98 preferred by the petitioner and move an appropriate application in the said Appeal, but as such, no relief can be granted in favour of the petitioner in the present Special Civil Application.

4. In view of the aforesaid facts and circumstances of the case, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.